

Bylaws of Open IX Association

A Delaware Non-profit Corporation

AMENDED September 5, 2014

Open-IX Association

Bylaws

Amended September 5, 2014 by the Open-IX Association
Membership

ARTICLE I – NAME AND PURPOSE

Section 1. Name

The name of the organization is “Open-IX Association.” It is a nonprofit organization incorporated under the laws of the State of Delaware.

Section 2. Purpose

Open-IX Association (hereinafter referred to as “Open-IX”) is organized exclusively for professional, commercial, industrial or trade association purposes. Open-IX exists to serve as a self-regulatory body for owners, operators, users of, and those concerned with internet exchanges; to encourage the creation and development of, and the investment in, internet exchanges by developing minimum standards of performance and common and uniform specifications for incoming and outgoing data as well as physical connectivity and the real estate which houses or on which the exchange is located; to improve the performance of internet exchanges by the development of criteria and methods of measurement, leading to the establishment of minimum criteria and methods for certifying the satisfaction of such criteria.

Section 3. Installation Certification

The Board of Directors shall institute and conduct a certification process for internet exchanges that will denote those entities which have met or exceeded minimum standards of performance; complied with common and uniform specifications for incoming and outgoing data as well as physical connectivity and the suitability of the property on which the exchange is located; and has met the performance requirements established by Open-IX. The Board shall, from time to time, specify the fee to be paid to Open-IX for granting such certification.

ARTICLE II - MEMBERSHIP

Section 1. Eligibility for Membership

Eligibility for membership in Open-IX shall be open to any individual or entity that is, owns, is employed by, or is associated with content providers, internet exchanges, networks, or data centers, or otherwise supports the purpose statement in Article I, Section 2. Membership is granted upon a majority vote of the Board of Directors, which vote shall be made in consultation with the Membership Committee, which is described below in Article IV, Section 4, after completion and receipt of a membership application adopted by the Board.

Section 2. Membership Classes

There shall be only one class of membership, with all the rights and privileges specified in these Bylaws. Each member shall represent one vote on all Open-IX issues that are brought to members for a vote, including but not limited to Open-IX elections, provided that the votes of members employed by the same employer, as determined by the Membership Committee, shall not exceed five (5) votes. By way of example, should 100 members vote on an issue and 16 vote “No” while 84 vote “Yes,” but 74 of those voting “Yes” are employed by a single employer, the “Yes” votes would be reduced to 15 and the proposition would fail.

Section 4. Rights and Benefits of Members

Members in good standing shall be entitled to the following privileges:

- Vote on all Open-IX issues that are brought to members for a vote, including but not limited to all Open-IX elections;
- Individual members may run as a candidate for the Board of Directors;
- Individual members may serve on an administrative committee, as those committees are defined below in Article IV; and
- Other privileges as specified by the Board of Directors.

Section 5. Policies and Procedures

The Board of Directors shall establish and publish policies and procedures for implementation of the membership program.

Section 6. Good Standing

In order to remain in Good Standing, a member must continue to qualify for membership as specified in Article II, Section I and must pay his or her or its annual membership dues each year on or before the deadline for paying dues established by the Board of Directors.

Section 7. Meetings of Members

The annual meeting of members shall be held on the date and at the time fixed, from time to time, by the Board of Directors, provided, that the first annual meeting shall be held on a date within thirteen months after the organization of the corporation, and each successive annual meeting shall be held on a date within thirteen months after the date of the preceding annual meeting. A special meeting shall be held on the date and at the time fixed by the Board of Directors.

Annual meetings and special meetings may be held at such place, either within or without the State of Delaware, as the Board of Directors may, from time to time, fix. Whenever the Board of Directors shall fail to fix such place, the meeting shall be held at the registered office of the corporation in the State of Delaware. The Board of Directors may also, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law. If a meeting by remote communication is authorized by the Board of Directors in its sole discretion, and subject to guidelines and procedures as the Board of Directors may adopt, members not physically present at a meeting may, by means of remote

communication, participate in a meeting and be deemed present in person and vote at a meeting whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (a) Open-IX shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member in good standing (b) Open-IX shall implement reasonable measures to provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (c) if any member votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by Open-IX.

Annual meetings and special meetings may be called by the Board of Directors or by any officer instructed by the Board to call the meeting.

Written notice of all meetings shall be given, which shall state the place, if any, date, and hour of the meeting, the means of remote communication, if any, by which members may be deemed to be present in person and vote at such meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice of an annual meeting shall state that the meeting is called for the election of directors and for the transaction of other business which may properly come before the meeting, and shall (if any other action which could be taken at a special meeting is to be taken at such annual meeting) state the purpose or purposes. The notice of any meeting shall also include, or be accompanied by, any additional statements, information, or documents prescribed by the Delaware General Corporation Law. Except as otherwise provided by the General Corporation Law, the written notice of any meeting shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each member entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the member at such member's address as it appears on the records of Open-IX. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which members may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting Open-IX may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting. Whenever notice is required to be given under the Delaware General Corporation Law, certificate of incorporation or bylaws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a member at a meeting of members shall constitute a waiver of notice of such meeting, except when the member attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

The Membership Committee shall prepare and make, at least ten (10) days before every meeting of members, a complete list of the members entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each member. Such list shall be open to the examination of any member, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or during ordinary business hours at the principal place of business of Open-IX. In the event that the Membership Committee determines to make the list available on an electronic network, the Committee shall take reasonable steps to ensure that such information is available only to members of Open-IX. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any member who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any member during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Meetings of the members shall be presided over by the Chairman of the Board or the Vice Chairman of the Board or, if neither of the foregoing is in office and present and acting, by a chairperson to be chosen by the members. The Secretary, or in the Secretary's absence, a secretary appointed by the chairman, shall act as secretary of every meeting.

The lesser of (a) ten percent (10%) of members eligible to vote or (b) two hundred (200) members eligible to vote shall constitute a quorum at a meeting of members for the transaction of any business. The members present may adjourn the meeting despite the absence of a quorum.

ARTICLE III – BOARD OF DIRECTORS

Section 1. General Powers

The property, affairs and business of Open-IX shall be managed and controlled by the Board of Directors. The Board of Directors may, by general resolution, delegate to Officers and/or Committees, such of its powers as provided for in these Bylaws.

Section 2. Number

There shall be seven (7) voting members of the Board of Directors, each of whom will be elected.

Section 3. Terms and Term Limits

The initial Board of Directors shall designate four (4) of its members to serve as Directors with terms ending on December 31, 2014, and shall designate three (3) of its members to serve as Directors with terms ending on December 31, 2015. All Directors other than the initial Board of Directors shall be elected for terms determined in this section and as selected during Open-IX Annual Meetings in accordance with the procedures set forth below in this Article. During Annual Meetings, an election shall be held to select Directors for

Directorships with terms that end on December 31 of the year during which the Annual Meeting is conducted. A Director's term shall commence on January 1 of the year following the year in which he or she is elected, unless he or she is elected to fill a vacancy. The term of a Directorship shall be two years except as provided for the initial Board of Directors.

No Director may serve more than three (3) consecutive terms. After three (3) consecutive terms, a Director may be re-elected to a Director position after a one (1) year absence from the Board.

Section 4. Selection

The Board of Directors shall be elected by an open nomination and election process from among the Open-IX membership. All candidates must be Members in Good Standing of Open-IX.

Elections will occur annually at the Open-IX annual meeting. The new Board of Directors members will be announced at the conclusion of voting. The elections will be administered by an elections committee consisting of three members of Open-IX. The elections committee will be appointed by a majority vote of the current board members whose terms are not expiring, and will serve until the conclusion of the election.

Prior to the election, a nominating committee may be appointed by a majority vote of the current board members whose terms are not expiring. The nominating committee may select candidates for the Board of Directors and may endorse or otherwise recommend such candidates to the Open-IX membership.

Section 5. Nominations and Biographical Information

Nominations shall be submitted to the Secretary at least 7 days prior to any election.

Nominations must be submitted by a member in Good Standing and the nominee must be a member in Good Standing. A member in Good Standing may nominate themselves. Candidates will then be listed on the Open-IX website, with biographies submitted by the candidates, from the end of the nomination period through the conclusion of the election. Members of Open-IX will be able to post endorsements of candidates to the Open-IX website, to appear alongside candidate biographies. Candidates will have the opportunity to make a short presentation during the annual meeting.

Section 6. Affiliation of Candidates

Each candidate must declare any and all affiliation(s) relevant to Open-IX, which will include his or her employer, as well as any other major relationships (for instance, if a candidate's primary employer is a nonprofit entity which is sponsored by a vendor, the candidate would declare both the nonprofit and the vendor as affiliations).

Section 7. Voting Process for Board of Directors Selection

Each member in Good Standing will be permitted to cast one vote per open Board of Directors seat. Cumulative voting is not permitted. The top vote-getters will be elected to the open positions.

Section 8. [Reserved]

Section 9. Meetings and Quorum

The Board of Directors will meet in person at least once per fiscal quarter, and may meet via conference calls on a more regular basis. All meetings must be called by the Chairperson at least thirty (30) days in advance.

No action may be taken by the Board of Directors unless a quorum of at least five (5) voting Directors are present. Unless otherwise specified in these Bylaws or provided by the Delaware General Corporation Law, those items on which the Board of Directors votes will be decided by absolute majority of those present at a meeting for which a quorum is present. No procedural change may be enacted without agreement of at least three (3) Directors. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place.

Any member or members of the Board of Directors or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble. Meetings shall be held at such place within or without the State of Delaware as shall be fixed by the Board.

No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board, the Vice Chairman of the Board, or by a majority of the directors in office.

No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. Whenever notice is required to be given under the Delaware General Corporation Law, certificate of incorporation or bylaws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of any such person at a meeting shall constitute a waiver of notice of such meeting, except when such person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

The Chairman of the Board, if present and acting, shall preside at all meetings. Otherwise, the Vice Chairman of the Board, if present and acting, or any other director chosen by the Board, shall preside.

Section 10. Vacancies

In the event of any vacancy on the Board that arises during a Director's term, whether by reason of resignation, removal, death, or otherwise, the Board of Directors may appoint a Director to fill the vacancy for the remainder of the term for which the vacating Director was elected.

Section 11. Resignation and Removal

Resignation from the Board must be tendered in writing and received by the Secretary. Any Board member may be removed with or without cause by a three-fourths (3/4) vote of all of the Directors at a meeting duly called for that express purpose. Except as may otherwise be provided by the Delaware General Corporation Law, any director or the entire Board of Directors may be removed, with or without cause, by the vote of a majority of members then entitled to vote at an election of directors.

Section 12. Attendance and Membership

Each Director must remain a Member in Good Standing of Open-IX throughout their terms.

Section 13. Chairman of the Board

The Board of Directors shall select one of its members as Chair. The Chairman shall preside at all meetings, and shall oversee the implementation of the policies and directives of the Board of Directors.

Section 14. Vice Chairman of the Board

The Board of Directors shall select one of its members as Vice Chair. The Vice Chair shall act as Chair in the absence of the Chair and when so acting shall have the power and authority of the Chair.

ARTICLE IV - COMMITTEES

Section 1. Administrative Committees

The Board of Directors will create two (2) standing committees to fulfill the Open-IX mission. Those committees will be the Standards Committee and the Membership Committee. The Board may also at its discretion create ad hoc committees to carry out other functions as needed. All members of committees must be Members in Good Standing of Open-IX. The chairperson of each committee will serve ex officio in a non-voting role on the Board of Directors, in order to facilitate communication among the groups. All committees will select their own Chairs by simple majority vote.

Section 2. Standards Committee

The Standards Committee will make recommendations to the Board for establishing common and uniform minimum standards for the operation and performance of internet exchanges. Specifically, the Standards Committee will develop and recommend methods for evaluating and measuring as well as determining minimum standards for the operation and performance of

internet exchange points, data centers, and physical connectivity, for adoption by the Board of Directors.

The Standards Committee will consist of at least five (5) members selected by the Board of Directors.

A Standards Committee member may be removed before the expiration of his or her term if a majority of the Board of Directors votes for his or her removal.

The Standards Committee will elect a new Chairperson after each annual selection cycle. The Chairperson will serve for one year.

Section 4. Membership Committee

The Membership Committee will be responsible for the recruitment and evaluation of individuals and entities for Open-IX's membership, and for determining the proportionate weight that each member's vote carries in Open-IX elections.

The Membership Committee will consist of at least five (5) members selected by the Board of Directors.

A Membership Committee member may be removed before the expiration of his or her term if a majority of the Board of Directors votes for the removal.

Section 5. Ad Hoc Committees

The Board of Directors may from time to time create ad hoc committees and appoint members as needed to carry out specific functions.

ARTICLE V – OFFICERS

Section 1. Officers

The officers of the corporation shall consist of a Chairman of the Board, a Vice Chairman of the Board, a Secretary, and a Treasurer. The Board of Directors shall select all officers. No individual may hold more than one officer position simultaneously. Officers not currently serving as voting Directors shall be non-voting ex-officio members of the Board of Directors.

Section 2. Secretary

The Secretary shall be responsible for the keeping and reporting of adequate records of all transactions and of all minutes of all meetings of the Board of Directors.

Section 3. Treasurer

The Treasurer shall be responsible for the finances of the corporation and its fiscal records, and shall supervise any fiscal agent. The Treasurer shall report to the Board at least once annually and more frequently upon request.

ARTICLE VI - AMENDMENTS

Section 1. Amendments

Amendments to these Bylaws may be enacted by a majority of those present at a meeting called for the purpose of considering an amendment, provided that notice of the proposed change has been given at least thirty (30) days prior to the meeting. An amendment may be put on the ballot by the Board of Directors, or by a petition signed by at least ten (10) members..

Section 2. Temporary Amendments

During the first year after these Bylaws are adopted, they may be temporarily amended by a unanimous vote of the Board, providing the amendments do not concern the composition or election of the Board, or the procedures for amending the bylaws. Any such amendments must be approved by the membership at the next annual election. Amendments not approved by the members will be rescinded.

ARTICLE VII – MISCELLANEOUS

Section 1. Pecuniary Benefit

Open-IX shall not engage in pecuniary benefit transactions, including, but not necessarily limited to, transactions between Open-IX and another party in which a Director or Officer has a financial interest, direct or indirect, subject to certain reasonable exceptions which may be provided by statute.

Section 2. Conflict of Interest

Directors and Officers shall disclose to the entire Board any involvement or affiliation with any organization or association, prior to any discussions by the Board that implicate or relate to the organization with which they are involved or affiliated. Directors and Officers shall refrain from participating in any decision of the Board of Directors or Officers involving an organization with which they have an affiliation if a reasonable person would conclude that the affiliation could interfere with the Director's or Officer's exercise of independent judgment.

Section 3. Dissolution Provision

In the event of the liquidation, dissolution or winding up of Open-IX, whether voluntary, involuntary, or by operation of law, except as may be otherwise provided by law, the Board of Directors shall, after paying or making provisions for the payment of all the liabilities of OpenIX, dispose of all the assets of Open-IX in a manner related to the purposes of Open-IX, to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by appropriate judicial or executive authority in conformance with applicable law. Upon the dissolution of Open-IX, the Board of Directors shall, after paying or making provisions for the payment of all the liabilities of Open-IX, dispose of all the assets of Open-IX exclusively for the purposes of Open-IX in such manner, or to such organization or organizations organized and operated exclusively for

charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by appropriate judicial or executive authority in conformance with applicable law.